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Attorneys for Plaintiff, SUSAN O'SHEA

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re

BRIAN HANKS

Debtor

SUSAN O'SHEA, an unmarried woman  
Plaintiff,

vs.

BRIAN HANKS and unmarried man,

Defendant.

Chapter 7

Case No. 4:18-bk-09801-SHG

Adv. No.

**COMPLAINT TO DETERMINE DEBT  
NON-DISCHARGEABLE  
UNDER 11 U.S.C. §§  
523(a)(2)(A), 523(a)(4), and 523(a)(6)**

Assigned to:

1 Plaintiff SUSAN O'SHEA ("O'Shea" or "**Plaintiff**") for her complaint against  
2 defendant BRIAN HANKS ("Hanks" OR "Defendant") alleges as follows:

3 **PARTIES, JURISDICTION, AND VENUE**

4 1. This is an adversary proceeding pursuant to 11 U.S.C. § 523 to determine a  
5 debt to be non-dischargeability. This adversary is commenced pursuant to Rules 7001(6) of  
6 the Federal Rules of Bankruptcy Procedures ("FRBP").

7 2. This Court has jurisdiction to hear this adversary proceeding as a core  
8 proceeding under 28 U.S.C. §§ 157(b)(2)(I), 157(b)(2)(J), 1334(a) and 1334(b).

9 3. On or about August 14, 2018 ("Petition Date"), BRIAN HANKS (the  
10 "Debtor" or "Hanks") filed a voluntary petition for relief under Chapter 7 in the United  
11 States Bankruptcy Court for the District of Arizona.

12 4. The judicial district is the proper venue for this adversary proceeding under 28  
13 U.S.C. § 1409(a), as this adversary proceeding arises under, and is in connection with, the  
14 Bankruptcy Case, which currently pending before this Court in this judicial district.

15 5. Defendant is an unmarried man and a resident of Pima County, Arizona, and  
16 the Debtor in the above captioned Chapter 7 Case.

17 6. All events giving rise to this Complaint occurred in Pima County, Arizona.

18 7. The Court has jurisdiction over the subject of this Complaint and the parties.  
19 Venue is proper.

20 **GENERAL ALLEGATIONS**

21 8. O'Shea's daughter, Carolyn O'Shea Meyer, has been diagnosed with Complex  
22 Regional Pain Disorder and Multiple Sclerosis.

23 9. O'Shea has undertaken various attempts to raise funds for treatments for her  
24 daughter, including a go-fund-me campaign. After the go-fund me campaign, an  
25 acquaintance name Jay Renteria informed O'Shea that he would invest money Hanks at Jans  
26

1 Jobses and associates. Renteria suggested that O'Shea contact Hanks and Jans Jobses as a  
2 way to raise money for her daughter.

3 10. Hanks was informed that O'Shea desperately needed to raise money for her  
4 daughter's medical care.

5 11. On June 1, 2016, O'Shea invested \$50,000 with Jans Jobses pursuant to an  
6 agreement signed by Hanks, that provided for 25% return, to be paid in two installments of  
7 \$33,250 to be paid on November 10, 2016 and December 19, 2016.

8 12. Defendants promptly paid O'Shea in accordance with the June 1, 2016  
9 agreement.

10 13. On December 1, 2016 Hanks' sent an email addressed to O'Shea in which he  
11 made the following representations:

- 12 a. His company was Jans Jobses and Associates, and that his partners are his  
13 fiancé Elisa Bonin and his brother Captain Robert Hanks of the North Las  
14 Vegas Police department.
- 15 b. That he and his partners were aware of "your daughters condition and the fact  
16 that your money means her medical care and future, rest assured not taken  
17 lightly."
- 18 c. That his partners, "along with my attorney are aware of each and every  
19 investment that we are involved in."
- 20 d. "I have currently over 2.2 Million in dealings and plan to increase that to 8  
21 million over the next 3 years."
- 22 e. During the 15 years I have handled investments for friends and family, not  
23 once have any of my investors lost a dime.
- 24 f. "My dealings with FEMI and my private business interest allow me to offer  
25 people like yourself opportunities that are rare to invest."

26 14. The representations in sub paragraphs c, d, e, and f, were false.

1           15.     Hanks knew these representations were false.

2           16.     Hanks made these representations to induce O'Shea to make a second  
3 investment with him.

4           17.     In December 2016, Hanks signed an agreement under which O'Shea invested  
5 \$65,000 (the principal and interest earned on the first investment) with Jans Jobes  
6 ("**Investment Agreement**"). The agreement promises 33% interest on the investment, with  
7 payments of \$43,000 to be made on March 1, 2017 and June 1, 2017. The Agreement  
8 further provided that the payments were "each with options to roll over any/all amounts at  
9 the request of Susan O'Shea investor." A true and correct copy of the Agreement is attached  
10 to this Complaint as Exhibit A.

11          18.     O'Shea informed Hanks that she did not want to roll over the March 1, 2017  
12 payment by email.

13          19.     Hanks, stated that Jans Jobes could not pay at that time because it was in the  
14 middle of an audit. Hanks stated that when the audit was finished, around the end of April  
15 2017, he would pay every penny promised.

16          20.     The representation that Jans Jobes was being audited was false.

17          21.     Hanks made numerous other false representations in order to try to convince  
18 O'Shea to forbear from enforcing the Investment Agreement

19          22.     Subsequently, Hanks demanded a change in the payment terms of the  
20 Investment Agreement under which he would repay the investment in \$10,000 monthly  
21 installments.

22          23.     On April 20, 2017 Jans Jobes in fact paid a \$10,000 installment.

23          24.     Subsequently Jans Jobes paid an additional \$5,000 to O'Shea.

24          25.     Hanks and Jans Jobes have failed to make any additional payments on the  
25 Investment Agreement.  
26

1 **Count I**

2 **Non-Dischargeable for Fraud 11 U.S.C. §523(a)(2)**

3 26. O'Shea incorporates each and every paragraph in this Complaint into this  
4 Count as if fully set forth herein.

5 27. On December 1, 2016 Hanks' sent an email addressed to O'Shea in which he  
6 made the following representations:

- 7 a. His company was Jans Jobs and Associates, and that his partners are his  
8 fiancé Elisa Bonin and his brother Captain Robert Hanks of the North Las  
9 Vegas Police department.
- 10 b. That he and his partners were aware of "your daughters condition and the fact  
11 that your money means her medical care and future, rest assured not taken  
12 lightly."
- 13 c. That his partners, "along with my attorney are aware of each and every  
14 investment that we are involved in."
- 15 d. "I have currently over 2.2 Million in dealings and plan to increase that to 8  
16 million over the next 3 years."
- 17 e. During the 15 years I have handled investments for friends and family, not  
18 once have any of my investors lost a dime.
- 19 f. "my dealings with FEMI and my private business interest allow me to offer  
20 people like yourself opportunities that are rare to invest."

21 28. The representations in subparagraphs c, d, e, and f were false.

22 29. Hanks knew they were false.

23 30. Hanks intended that O'Shea rely on these false representations.

24 31. O'Shea in fact reasonably relied on Hanks' false representations.

25 32. O'Shea was damaged in an amount to be established at trial by Hanks  
26 fraudulent representations.

1           33.     Consequently, and as a direct and legal result of Hanks' actual fraud, as  
2 alleged hereinabove, the resulting damages suffered by Plaintiff in the amount of their  
3 claims, should be excepted from discharge pursuant to 11 U.S.C. §523(a)(2)(A).

4                                   **SECOND CAUSE OF ACTION**

5           **(Exception to Discharge for Defalcation While Acting in a Fiduciary Capacity,**  
6                                   **Embezzlement or Larceny - 11 U.S.C. §523(a)(4)**

7           34.     O'Shea incorporates each and every paragraph in this Complaint into this  
8 Count as if fully set forth herein.

9           35.     When O'Shea gave Hanks the \$65,000 to invest, it created a de facto trust,  
10 where Hanks was trustee, O'Shea a beneficiary, and an identifiable trust res of the \$65,000  
11 invested.

12          36.     Hank's was acting as a fiduciary to O'Shea when the debt was created,  
13 promising to use his special investment knowledge and skills.

14          37.     The debt created out of the investment is the result of fraud and defalcation.

15          38.     As a direct and legal consequence of the foregoing, the amounts Hanks  
16 misappropriated while acting in his fiduciary capacity, and embezzled from Plaintiff should  
17 be excepted from discharge pursuant to §523(a)(4).

18                                   **THIRD CAUSE OF ACTION**

19           **(Exception to Discharge for Willful or Malicious Injury - 11 U.S.C. §523(a)(6)**

20          39.     O'Shea incorporates each and every paragraph in this Complaint into this  
21 Count as if fully set forth herein.

22          40.     At all times herein mentioned, Hanks willfully and maliciously converted  
23 Plaintiff's money and property.

24          41.     Hanks conversion of Plaintiff's property and monies was intentional and  
25 deliberate, performed without justification or excuse.

42. Hanks willfully and maliciously injured Plaintiff by converting their property and monies and the amount of the claims of the Plaintiff should be excepted from discharge pursuant to 11 U.S.C. §523(a)(6).

**WHEREFORE**, O'Shea prays pray for judgment against the Defendant as follows:

A. Compensatory and punitive damages for the fraudulent misrepresentations, embezzlement as a fiduciary, and Hank's willful and malicious injuries;

B. A determination that the damages are non-dischargeable under 11 U.S.C. §§523(a)(2),(4), and (6);

C. Attorney's fees, costs, and taxable expenses as permitted by applicable law;

and,

D. Such other relief the Court deems fit under the circumstances.

DATED: November 21, 2018.

KASEY C. NYE, LAWYER, PLLC

By /s/ Kasey C. Nye  
Kasey C. Nye  
Attorneys for Plaintiff SUSAN O'SHEA